INDEX.

Authorities Cited.

Statutes Cited.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1955.

No. 853.

JACOB SENKO,
Petitioner,

vs.

LaCROSSE DREDGING CORPORATION,
Respondent.

Appellate Court of the State of Illinois.
On Petition for a Writ of Certiorari to the Fourth District,

BRIEF FOR RESPONDENT IN OPPOSITION.

The judgment of the Appellate Court of Illinois for the Fourth District (hereinafter called Appellate Court) was based upon undisputed facts which made it legally necessary for that Court to enter judgment for respondent. The judgment was and is correct. There is no proper legal basis or any special and important reason for this Court to review that judgment and the petition for a writ of certiorari should be denied.

THE QUESTIONS PRESENTED FOR REVIEW.

Petitioner requests this Court to review the Appellate Court's judgment on the theory that the jury, by its verdict, necessarily concluded he was a seaman and since it settled a disputed question of fact the Appellate Court had no legal right to reverse the trial court's judgment entered on such verdict. Petitioner overlooks the circumstance, which the Appellate Court and the Supreme Court of Illinois did not, that there was no significant dispute about the facts of petitioner's duties and conditions of employment which the jury was called upon to decide. The question presented to the Appellate Court, the Supreme Court of Illinois, and now to this Court, is whether the law as applied to such undisputed facts, warrants the conclusion that petitioner was a seaman and therefore entitled to recover under the Jones Act.

Respondent urged the Appellate Court to reverse the trial court's judgment for the additional reasons that petitioner had failed to prove that respondent was negligent and had made an unrevoked stipulation with respondent before the Industrial Commission of Illinois that the Illinois Workmen's Compensation Act was applicable to his accident. The uncontroverted evidence that petitioner was not a seaman made it unnecessary for that court to consider or reverse the trial court's judgment for these reasons.

STATEMENT OF THE CASE.

Petitioner, as he did in the Appellate Court and the Supreme Court of Illinois, attempts to lend the suggestion of navigation to his employment by referring repeatedly to the "soundings" which he took (pages 7, 11, 12), the "shore party" (pages 7, 11, 12), the "dredge crew" (page 12), and the "dredge tender" (page 7). The "soundings"

had nothing whatever to do with the navigation of the dredge, as the Appellate Court noted, and were made solely for the purpose of enabling the operator to know how deep to dig. As petitioner put it (Abs. 95):

> "I would take the soundings to see how deep the dredge cut out the bottom. That is what I would do when I took those soundings."

The "dredge tender" was a small row boat which petitioner pushed across the 10 to 15 feet of water which separated the stationary dredge and the bank on the night of his accident (Abs. 96). The "shore party" was a "fellow who called" for one of the lanterns which petitioner took with him from the dredge (Abs. 89). The "dredge crew" were the oiler, operator, engineer and laborer, none of whom were "members of the crew," because none was aboard the dredge primarily to aid in its navigation.

Petitioner's statement does not in any manner controvert these undisputed facts regarding petitioner's employment by respondent and the services which he performed:

(a) He was a member of the common laborers' union, had worked for many building contractors as a laborer on construction work, and had never done work other than that of a laborer (Abs. 93);

(b) He did not at any time belong to the National Maritime Union, the Marine Engineers Benevolent Association or the Master Mates and Pilots, which unions have jurisdiction over seamen (Abs. 95);

(c) He signed no ships' articles, lived at Mt. Olive, Illinois, more than 40 miles from his work, drove back and forth each day, and ate and slept at home at night (Abs. 95, 94).

(d) He was under the direction of a steward of the laborers' union who had jurisdiction of all other laborers on the job. His superior was either respondent's superin-

tendent or assistant superintendent, neither of whom was "master" of the dredge Wilkinson and both of whom had an office or headquarters on land (Abs. 95, 45);

(e) The dredge had no "master," mate or pilot (Abs. 95). It did have an operator, who handled the controls on the cutterhead and pumps; an engineer, who took care of the engines which operated the pumps and cutterhead; and an oiler, who oiled these engines. The employees were not "signed on" the dredge, were members of the Operating Engineers Union, a building crafts union, were paid by the hour, lived on land, and ate and slept at home each night (Abs. 81, 46, 36, 37, 38);

(f) The dredge was not self-propelled, had no sleeping quarters and no facilities for preparing meals (Abs. 37, 94);

(g) The dredge at times was moved by tugs from one location to another, but petitioner was never on the dredge when it was so moved (Abs. 96);

(h) Neither he, the operator, oiler, nor engineer required any training or license in navigation to qualify for and to do their jobs (Abs. 39, 40);

(i) He was paid $2.00 an hour and time and one-half for work which he did in excess of 8 hours in one day and 40 hours in one week (Abs. 45, 46, 94); and

(j) He and the other employees on the dredge looked to respondent and not to the dredge, or its earnings, for their wages (Abs. 45).

Although the duties, skills and working conditions of seamen, including deckhands, employed on vessels plying the Mississippi River and other navigable inland waterways, on and prior to November, 1951, were proved by uncontroverted evidence, petitioner makes no reference thereto in his statement. These facts show:

(a) Such vessels are manned by pilots, or masters, licensed engine room crewmen, unlicensed deckhands, and galleyhands (Abs. 110);

(b) The pilots, engine-room crewmen, deckhands and galleyhands are respectively members of and represented by the Master Mates and Pilots Union, the Marine Engineers Benevolent Association, and the National Maritime Union, all seamen's unions (Abs. 111);

(c) They are signed on to the vessel on which they work, live and take their meals on board (at the vessel's expense) and have laundry facilities and lounging quarters on the vessel (Abs. 112, 113);

(d) They stand two watches a day of six hours on and six hours off duty, are paid a monthly salary and receive no premium pay for overtime work (Abs. 112, 113);

(e) They must be able to splice lines and cables, operate winches, have knowledge and an understanding of navigation rules and signals. They are required to understand the meaning of buoy lights and running lights on approaching vessels in order to guard the safety of the vessel while it is in navigation (Abs. 111, 113, 114);

(f) They must know how to make up a tow consisting of as many as 18 to 20 barges, to place running lights, and to maintain searchlights in good working order. They stand watch on the front of a tow in bad weather to transmit signals to the pilot, and, when required, they must be able to operate bilge pumps to remove water from the hold of the vessel (Abs. 111, 112).

Although petitioner was required to be a seaman in order to come within the provisions of the Jones Act and to recover in this suit, the undisputed evidence showed he neither possessed nor exercised any of the skills and abili-

ties required of and exercised by seamen aboard vessels plying the navigable inland waterways of the United States. His work, skill, manner and amount of payment was that of a land-based laborer and he was injured while entering a doorway of a shelter on land maintained there for him and other laborers (Abs. 43, 97).

While petitioner now characterizes himself as a seaman he clearly indicated at the trial he did not so regard himself by stating he "didn't know what it was in the first place" (Abs. 123).

ARGUMENT.

I.

The Facts Regarding Petitioner's Status as a Seaman Were Undisputed and the Appellate Court Was Required by Law to Enter Judgment for Respondent.

The uncontroverted facts proved:

(1) Petitioner was not a member of the crew of the dredge since he was not aboard for the primary purpose of aiding in its navigation; and

(2) The dredge was not in navigation or plying in navigable waters.

1. Section 33 of the Merchant Marine Act of 1920, commonly known as the Jones Act (Title 46, U. S. C. A., Section 688), was enacted June 5, 1920, and provided in part that:

> "Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law" * * *.

From June 5, 1920, until the Longshoremen's and Harbor Workers' Compensation Act [Title 33, U. S. C. A., Section 902 (3)] was passed on March 4, 1927, "seaman" was construed to mean both casual workers on navigable waters, such as longshoremen and harbor workers, as well as the master and members of a crew of a vessel who were on board primarily to aid in the vessel's navigation. All such employees were considered to be seamen and to have a right of action against the owner of a vessel for injuries sustained as a result of negligence of the master or members of the crew of the vessel (**Beadle v. Spencer**, 298 U. S. 124, 80 L. Ed. 1082, 56 S. Ct. 712; **International Stevedoring Company v. Haverty**, 272 U. S. 50, 71 L. Ed. 157, 47 S. Ct. 19).

After passage of the Longshoremen's and Harbor Workers' Compensation Act, which provided fixed compensation for casual maritime workers and excluded a master and member of the crew of a vesel from its coverage, "seaman," under the Jones Act, was construed to mean only a master or member of a crew of a vessel plying in navigable waters (**South Chicago Coal and Dock Co. v. Bassett**, 309 U. S. 251, 84 L. ed. 732, 60 S. Ct. 544). Petitioner, therefore, in order to have the status of a "seaman," within the meaning of the Jones Act (since the dredge Wilkinson had no "master") was required to prove he was a member of the crew of the dredge and that it was plying in navigable waters.

1) A Member of a Crew of a Vessel Is One Who Is Aboard for the Primary Purpose of Aiding in Its Navigation.

In **Seneca Washed Gravel Corporation v. McManigal** (C. A. 2d), 65 F. 2d 779, the court defines "crew" as, p. 780:

> "The word 'crew' is used in the statute to connote a company of seamen belonging to the vessel, usually including the officers. It is the 'ship's company.' **U. S. v. Winn**, 28 Fed. Cas. 733, No. 16, 740. The crew is usually referred to and is naturally and primarily thought of as those who are on board and aiding in the navigation without reference to the nature and arrangement under which they are on board." (Emphasis supplied.) (Authorities.)

The court defined "crew" in the **Bound Brook** (D. C. Mass.), 146 Fed. 160, 164, as:

> "When the 'crew' of a vessel is referred to, those persons are naturally and primarily meant who are on board her aiding in her navigation," * * *.

The Buena Ventura (D. C. N. Y.), 243 Fed. 797, 799, is to the same effect.

In **Anderson v. Olympian Dredging Co.** (D. C. Calif.), 57 F. Supp. 827, a laborer who was listed as a mate, but whose duties were watching the pipe line, operating the engine on the barge, rigging the equipment on the barge (which was not self-propelled), and who worked by the day, and ate and slept on shore, was not a "member of the crew" because, p. 828:

> "It cannot be said that he was naturally and primarily on board the vessel to aid in her navigation, * * *."

In **Frankel v. Bethlehem-Fairfield Shipyard** (C. A. 4th), 132 F. 2d 634, a workman engaged in working on a ship launched but not completed and lying in navigable waters was not a "member of the crew" of the vessel because, p. 636:

> "his duties had no direct relation to navigation."

Diomede v. Lowe (C. A. 2d), 87 F. 2d 296, affirms and quotes the definition of "crew" (p. 298) in the **Seneca Washed Gravel Corporation** case quoted above, while in **Wilkes v. Mississippi River Sand & Gravel Company** (C. A. 6th), 202 F. 2d 383 (cert. den. 346 U. S. 817, 98 L. ed. 344, 74 S. Ct. 28), the court in discussing who is a "member of the crew" said, p. 388:

> "It would seem that the several tests under the Jones Act should be derived from the cases of **South Chicago v. Bassett**, supra; **Norton v. Warner Co.**, supra; **Maryland Casualty Co. v. Lawson**, 5 Cir., 94 F. 2d 190; **A. L. Mechling Barge Line v. Bassett**, 7 Cir., 119 F. 2d 995; **Carumbo v. Cape Cod S. S. Co.**, supra; and as set forth in **Rackus v. Moore-McCormack Lines, Inc.**, D. C., 85 F. Supp. 185, namely, (1) **that the vessel be in navigation;** (2) **that there be more or less permanent connection with the vessel; and** (3) **that the worker be aboard primarily to aid in navigation.**" (Emphasis added.)

There is no dispute that petitioner was not aboard the dredge Wilkinson "primarily to aid in its navigation." The dredge, in fact, had never been engaged in navigation. It was simply a floating piece of earth-moving equipment which, although capable of the characterization of "vessel," had never been employed in navigation.

In order for petitioner to have been a "member of the crew" of the dredge Wilkinson, it was necessary that he be aboard to aid in its navigation. To be in navigation the dredge must "have been plying in navigable waters" of the United States.

2) The Dredge Wilkinson Was Not in Navigation or Plying in Navigable Waters.

Although petitioner charged in his amended complaint that the dredge was "operated on navigable waters of the United States in Madison County, Illinois," there is no evidence in the record that the water in which the Wilkinson was stationed was navigable water or that the Wilkinson was "plying" in such water.

In **Desper v. Starved Rock Ferry Company** (C. A. 7th), 188 F. 2d 177 (aff'd 342 U. S. 187, 96 L. ed. 205, 72 S. Ct. 216), after referring to the opinion in **Swanson v. Marra Brothers**, 328 U. S. 1, 90 L. ed. 1045, 66 S. Ct. 869, the court said, p. 180:

> "This decision clearly demonstrates that, since the passage of the Longshoremen's Act, the Court has retreated from the position taken in the **Haverty case and has narrowed the Jones Act concept of 'seaman' to the point where it includes only one who is a member of the crew of a vessel plying in navigable waters.**" (Emphasis supplied.)

In **Posavec v. Merritt-Chapman and Scott Corporation** (D. C. N. Y.), 106 F. Supp. 170, 171, plaintiff's son, who was employed as a night watchman on board the defend-

ant's gravel and sand barge, was killed when the craft capsized. Citing the **Marra Brothers case** the court said:

> "This statute (the Jones Act), as it has been interpreted by the courts, is applicable only to those persons who are officers or the members of a crew of a vessel that operated on navigable waters."

The court held that the decedent was not a person who was within the protection of the Jones Act because he was not a member of the crew.

The court in **Finnie v. Pittsburgh Coal Company** (D. C. Penn.), 97 F. Supp. 721, 722, said:

> "In the Swanson case, the court held that only members of a crew of a vessel **plying in navigable waters** could avail themselves of the Jones Act, in view of the provisions of the Longshoremen's and Harbor Workers' Compensation Act * * *." (Emphasis supplied.)

Webster's New International Dictionary, Second Edition, defines "plying" as:

> "To go or travel more or less regularly back and forth (between), as, the steamer plies between two cities."

The American College Dictionary contains this definition:

> "To traverse (a river) (etc.), esp. on regular trips.
> "To drive or run regularly over a fixed course or between places, as a boat, a stage (etc.)."

The dredge Wilkinson was not "plying in navigable waters," for, as the Appellate Court found and petitioner testified, it was "fastened some way to the shore" (Abs. 95). It was a stationary earth-moving dredge. It had on occasions been towed from one location to another as its dredging work at a particular site was completed. It had

never, however, traveled "more or less regularly back and forth" between any locations and had not consequently at any time been engaged in "plying" in navigable waters.

Although petitioner states at page 11 of his petition "he did accompany her (the dredge) on whatever travels she did make," he testified on the trial:

> "I don't know whether it was necessary to tow or push the dredge when it was moved from one place to another, because I wasn't there" (Abs. 95).
>
> "I was never working on the dredge when it was moved from one area to another" (Abs. 96).

A) The Water in Gabaret Slough, in Which the Dredge Was Excavating on November 5, 1951, Was Not Navigable Water.

Gabaret slough, prior to November 5, 1951, had never been used as a "highway for commerce, over which trade and travel were conducted in the customary modes of trade and travel on water." Absent such use the slough did not constitute navigable water. Navigable waters are defined by this Court to be, **The Daniel Ball**, 10 Wall. (U. S.) 557, 563, 19 L. Ed. 999, 1001:

> "Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used or are susceptible of being used in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water."

In **Iowa-Wisconsin Bridge Company v. U. S.** (Ct. of Claims), 84 F. Supp. 852 (cert. denied, 339 U. S. 982, 94 L. ed. 1386, 70 S. Ct. 1020), it is stated, p. 866:

> "The rule in this country has been, and as far as we can tell, still is, that navigability is a fact which

must be proved and the proof must consist of evidence that the watercourse in question is either used or is susceptible of use in its ordinary condition, as a highway of commerce over which trade and travel are or may be conducted in the customary modes of trade and travel on water. **The Daniel Ball**, 10 Wall. 557, 563, 19 L. ed. 999."

The court added:

> **"The plaintiff has referred us to numerous cases and we have found others, in which sloughs, admittedly a part of navigable bodies of water, have been held not navigable themselves because they served no useful commercial service to the public."** (Authorities.) (Emphasis supplied.)

The court concluded the sloughs, although joining the Mississippi River, were not "navigable waters" because, p. 867: "The sloughs have never served any useful commercial purpose."

In **Harrison v. Fite** (C. A. 8th), 148 Fed. 781, 783, the court said:

> "To meet the test of navigability as understood in the American law a watercourse should be susceptible of use for purposes of commerce or possess a capacity for valuable floatage in the transportation to market of the products of the country through which it runs. It should be of practical usefulness to the public as a public highway **in its natural state and without the aid of artificial means.**
>
> "* * * Mere depth of water, without profitable utility, will not render a watercourse navigable in the legal sense, so as to subject it to the public servitude, nor will the fact that it is sufficient for pleasure boating or to enable hunters or fishermen to float their skiffs or canoes. **To be navigable a watercourse must**

have a useful capacity as a public highway of transportation" (Authorities). (Emphasis supplied.)

To the same effect are **North American Dredging Co. of Nevada v. Mintzer** (C. A. 9th), 245 Fed. 297, and **Levoy v. United States**, 177 U. S. 621, 44 L. ed. 914, 20 S. Ct. 797.

All of the witnesses testifying to the use made of the slough agreed that it had never been used for trade, travel or commerce.

William Sanders said (Abs. 36):

> "I never saw any river traffic that went through there such as barges, river boats or anything of that kind. As far as my knowledge and experience is concerned, there was never any river traffic that went through there."

Dale Skeen, who was familiar with the slough for 35 or 40 years, testified (Abs. 60):

> "There wasn't any river traffic going through there that I can recall. While the slough was used for swimming and fishing and rowboats, I've never seen any river traffic or barge tows, or large vessels or excursion vessels come through there, if that's what you mean. It wasn't used for river commerce or traffic."

Clifford Stevens, who had been familiar with the slough for 35 years, testified (Abs. 63, 64):

> "In the years that I have been acquainted with the slough there were areas where even a rowboat couldn't travel.
>
> "I never saw any other small craft in the slough other than the rowboats."

Cabaret slough was never susceptible of or used as a public highway of transportation. It was not in its natural state, and without the aid of artificial means, of any prac-

tical usefulness to the public as a means of carrying on trade or commerce in the customary modes of trade and travel on water. It was not until after it had been converted to a navigable canal capable of such use that it became a navigable body of water. Petitioner was injured on November 5, 1951. The canal was not completed and opened to traffic until February 7, 1953 (Abs. 52). At the time of petitioner's injury the dredge Wilkinson was not on or plying on navigable waters of the United States. It was in fact floating in an artificial basin created in large part by its own work. As said in **Kibadeaux v. Standard Dredging Company** (C. A. 5th), 81 F. 2d 670, 672 (cert. den. 299 U. S. 549, 81 L. ed. 404, 57 S. Ct. 11):

> "Indeed, injuries occurring on waters which are to become navigable after the dredge cuts the channel, but which have never been navigated before, could hardly be said to occur on navigable waters at all."

Petitioner alleged as an essential basis for his recovery that the dredge Wilkinson was operated on navigable waters of the United States at the time of his injury. It was not, and the Appellate Court was required, as it did, to enter judgment for respondent.

Petitioner states at page 5 of the petition that the slough "had also been used commercially by boats and barges hauling mules, coal wagons and other livestock from the mainland to Gabaret Island." The record shows, however (Abs. 86, 87, 88), the "commercial use" of the slough consisted of crossing it by "a ferry" which was pulled from one side of the slough to the other, a distance of about 200 feet, when the Mississippi River was flooding and when the roadway across the slough could not be used. The road had extended through the slough for approximately 56 years (Abs. 84, 86) and the only time mules, coal or livestock were taken from one side of the slough to the other "was when the river was in flood stage" (Abs. 86). Such

limited emergency use of a boat to cross a swollen slough can hardly be said to make the slough a highway for commerce over which "trade and travel are conducted in the customary modes of trade and travel on water." **The Daniel Ball**, 10 Wall. (U. S.) 557, 563, 19 L. ed. 999, 1001.

The Cases Relied on by Petitioner.

Petitioner relies upon three Courts of Appeals cases and the opinion of this Court in **Gianfala v. The Texas Co.**, 350 U. S. 879, to support his contention that he was a seaman and a "member of the crew" of the dredge. (**Gahagan Construction Company v. Armao** [C. A. 1st], 165 F. 2d 301; **McKie v. Diamond Marine Co.** [C. A. 5th], 204 F. 2d 132; **Summerlin v. Massman Const. Co.** [C. A. 4th], 199 F. 2d 715.)

While the undisputed facts make it unmistakably clear that petitioner, as a matter of law, could not be a "member of the crew" of the dredge Wilkinson, the following comment about these cases may be made.

In the **Gahagan case** the vessel involved had accommodations for preparation of meals and sleeping quarters. It was brought from New York to Boston with eleven men on board, all of whom slept and ate thereon. Plaintiff testified that he was hired as a seaman and told to take orders from the captain and the mate of the dredge. He performed duties of picking up its line, repairing it, fixing anchors, and setting up navigation lights. In addition, at times he worked on the tugboat which moved the dredge.

Although the tide rose only four hours out of twelve, this was a regular movement which made the water where the vessel was working navigable eight hours out of each twenty-four. The dredge was so far out in the water of the harbor that it took 15 or 20 minutes to bring plaintiff to shore by the tugboat after he was injured.

The **Summerlin case** was decided on the pleadings and the facts are not detailed. The Court described them as comparable to those in **Jeffery v. Henderson Bros.** (C. A. 4th), 193 F. 2d 589. In that case the vessel was licensed for coastwide trade, was moved every day on the navigable waters of the Ohio River and its movements were made in compliance with the rules of navigation governing the movement of river traffic.

In the **McKie case**, plaintiff had "followed the sea" for many years, held a tanker man's license, and was required to operate the dredge tender, a 25-foot motor vessel, which was used to tow the dredge to various locations in and out of Tabb's Bay off the Texas coast. Plaintiff consequently "worked at whatever travel there was by this vessel" and was to that extent engaged in navigation.

In the **Gianfala case** the accident occurred on the navigable waters of the Gulf of Mexico while the deceased employee was engaged in unloading pipe from one barge to another. All employees worked six days on duty and six days off and were transported to and from the barges by speedboats and the deceased had moved with the barge on navigable waters of the Gulf of Mexico on at least ten or twelve occasions.

The decision of this Court in **South Chicago Coal and Dock Co. v. Bassett**, 309 U. S. 251, 84 L. ed. 732, 60 S. Ct. 544, makes petitioner's contention that he is a seaman untenable. This Court in that case affirmed the judgment of the Court of Appeals, which in reversing the judgment of the District Court holding plaintiff's intestate was a member of the crew, said, 104 F. 2d 522, 528:

> "In either case the facts are not in dispute. Therefore, on undisputed evidence, is the finding, which we might call a conclusion, that the deceased was a seaman, consistent with the undisputed facts?

"Convinced as we are that the evidence establishes a non-seaman status, it followed that the court erred in holding to the contrary."

Petitioner, to be a "seaman" under the Jones Act, was required to prove he was a "member of the crew" of the dredge Wilkinson. The undisputed evidence showed as a matter of law he was not, for:

(1) He was not aboard the dredge "primarily to aid in its navigation," because:

(a) the dredge was not engaged in navigation since it was not "plying in navigable waters," but was stationed at a given location performing its function of excavation; and

(b) the artificial basin which it was digging was not a navigable water of the United States because it was a part of a slough which had never been used as a "highway for commerce." Under such circumstances the Appellate Court had no alternative but to enter judgment for respondent. In so doing it did not invade the jury's province to decide factual issues. It simply made a proper application of the law to the undisputed facts. That it was proper for it so to do is well illustrated by **Desper v. Starved Rock Ferry Co.**, 342 U. S. 187, 96 L. ed. 205, 72 S. Ct. 216. In this case a jury found plaintiff's intestate was a member of the crew of a vessel and awarded plaintiff $25,000.00. The Court of Appeals (C. A. 7th) reversed the District Court's judgment on this verdict and held plaintiff's intestate was not a member of the crew of a vessel and could not recover under the Jones Act. This Court affirmed the judgment of the Court of Appeals. In **Zientek v. Reading Company** (C. A. 3rd), 220 F. 2d 183, the trial court found plaintiff was a member of a crew in a suit brought under the Jones Act. The Court of Appeals reversed the District Court's judgment on this verdict and said, page 186:

"Since there was no evidence upon which a jury could have found that appellee was a crew member

of any vessel, the judgment will be reversed with directions to dismiss the action."

Petitioner was not a member of the crew of the dredge Wilkinson and there was and is no evidence upon which such a conclusion can be based. The Appellate Court properly so found.

This Court in **Warner, Admx., v. Goltra**, 293 U. S. 155, 79 L. ed. 254, 257, 55 S. Ct. 46, said:

> "In a broad sense, a seaman is a mariner of any degree, one who lives his life upon the sea."

Petitioner, as a laborer who worked both on and off the stationary Wilkinson, was indeed remote from the "seaman" defined by this Court. He was equally remote from those seamen who ply the navigable inland waterways of the United States and who have training in navigation principles, stand watch, make up tows, read and transmit buoy signals, understand running lights, splice cables, maintain searchlights, operate bilge pumps, live aboard their vessels, receive a monthly salary, belong to and have representation by maritime unions, and whose principal purpose aboard their vessel is to aid its navigation.

There was nothing maritime about petitioner or his work. He was a land laborer who had non-navigation duties to perform on a dredge stationed on non-navigable water and who was, in performing his duties on land, injured as he claims, as the result of respondent's alleged negligence in operating a stove in a building on land.

CONCLUSION.

The law and the undisputed evidence made it necessary and proper for the Appellate Court to enter judgment for respondent. It had no alternative. Its judgment was and is correct. It might well have decided the case for respond-

ent because of petitioner's failure to prove respondent was negligent, or because petitioner had made an unrevoked stipulation with respondent before the Industrial Commission of Illinois that the Illinois Workmen's Compensation Act was applicable to his accident. The uncontroverted evidence that petitioner was not a seaman made this unnecessary.

The judgment of the Appellate Court was and is correct. There is no proper legal basis or any special and important reason for this Court to review that judgment. The petition for a writ of certiorari should be denied.

Respectfully submitted,

HENRY DRIEMEYER,
322 First National Bank Building,
East St. Louis, Illinois,
Attorney for Respondent.

STUART B. BRADLEY,
135 South La Salle Street,
Chicago 3, Illinois,

ROBERT BRODERICK,
322 First National Bank Building,
East St. Louis, Illinois,
Of Counsel.